IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

APPEAL FROM ORDER NO. 882 OF 2007

WITH

CIVIL APPLICATION NO. 1230 OF 2007

IN

NOTICE OF MOTION NO. 928 OF 2005

IN

BCCC L.C. SUIT NO. 1008 OF 2005

Mr. Mohammed Sayeed A.Munshi ... Appellant
(Orig. Plaintiff)

Versus

Hussein Usman Merchant & Ors. ... Respondents
(Orig. Defendants)

Mr. Chirag Balsara, Advocate i/b. M/s. Divya Shah Associates, Advocates, for the appellant.

Mr.Hussein U.Merchant, Party Respondent No.1 present.

Ms. Geeta Joglekar,Advocate, for B.M.C.

CORAM: J.H.BHATIA,J.

DATE: 28th November,2007.

P.C.

1. Heard learned Counsel for the

appellant-plaintiff and defendant No.1 in person for both the defendants. Perused the report.

2. From the Commissioner's Report, it appears that lower half portion of the rear side staircase was not found in existence in March,2005 when the Commissioner paid visit to the premises. However, upper half portion of the rear side staircase was in existence. According to the defendants, the lower half portion was dismantled or removed by the plaintiff shortly before filing the suit and thereafter the plaintiff tried to close that entrance. On the other hand, according to the plaintiff, that entrance was closed way back in 1971-72 by the defendants themselves and now they are trying to open. The trial Court refused the temporary injunction in favour of the plaintiff.

3. After some discussion at the Bar, the defendants also agree that merely by deciding the suit filed by the plaintiff for perpetual injunction, their purpose is not going to be served. The defendants intend to file a counter-suit for mandatory injunction for reconstruction of the lower part of the rear side staircase so that it may be brought to its original condition. After some discussion, the parties agree that the status quo as found by the Commissioner may be maintained pending the suit.

4. In view of the above, the interest of justice could be subserved by the following directions :-

(i) Pending the suit, being L.C.Suit No.1008 of 2005, both the parties shall maintain status quo as seen in the Commissioner Report.

(ii) The defendants may file a suit for mandatory injunction for reconstruction of the lower portion of the rear side staircase within one month from this date. Within six weeks from the service of the writ of summons, the present plaintiff (who shall be the defendant in that suit) shall file written statement and the trial Court shall expedite the hearing of both the suits together and shall try to dispose of the same within one year.

Appeal stands disposed of.

5. As the Appeal itself is disposed of, this Application does not survive and stands disposed of.

6. Parties to act on a copy of this Order duly authenticated by the Sheristedar of this Court.

(J.H.BHATIA,J.)